

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 19,316
)	
Appeal of)	

INTRODUCTION

The petitioner appeals a decision of the Department for Children and Families, Economic Services Division, (DCF) terminating her Food Stamp benefits due to excess income. The issue is whether DCF should count income of the petitioner's nineteen-year-old son in determining the family's eligibility.

FINDINGS OF FACT

1. The petitioner lives with her two sons, aged nineteen and sixteen. The petitioner receives Reach Up benefits of \$548 per month on behalf of herself and her younger son. She also receives \$50 from the child support "pass-through" program. The nineteen-year-old son works and received income of \$1,908.36 last August which included some overtime pay. The family lives in an apartment for which they pay \$900 in rent which includes every utility except heating.

2. The nineteen-year-old son graduated from high school in June of 2003 but continued to live at home until he went to college in September of 2003. During that summer, he was

required to participate in job search activities because he was a mandatory part of the Food Stamp household. He had difficulty completing his job search and claimed a medical exemption based on surgery he was having for a pilonidal cyst on June 27, 2003. His physician stated that he would be fit for duty after the surgery by July 25, 2003. He was sanctioned on July 10, 2003 for failure to comply with work registration requirements but the sanction was lifted when he obtained employment on July 16, 2003.

3. The petitioner's older son left the household in September of 2003 to attend college and did not return until late December of 2003. He did not return to college but remained in his mother's household and was again required by DCF to participate in work activities as a mandatory member of the Food Stamp household. He was again sanctioned on February 3, 2004 for failure to engage in work activities. He was told at that time, that at the end of the monthly sanction he would have to reapply for benefits unless he became exempt from work requirements. It does not appear that the petitioner's son reapplied for benefits and the petitioner and her younger child only received benefits for the following months.

4. During a review of the family's eligibility in August of 2004, it came to DCF's attention that the

petitioner's older son had begun to work and was earning \$1,908.36 per month. DCF added that income to the other income in the family, \$598, and determined that the total household income of \$2,506.36 made the family ineligible for Food Stamp benefits because they failed the "gross income test". The family was notified on September 16, 2004 that their Food Stamp benefits would cease as of September 30, 2004. They appealed from that decision on September 27, 2004 and received continuing benefits.

ORDER

The decision of DCF is affirmed.

REASONS

The petitioner appeals because she believes that DCF should not be counting her son as a member of her household.¹ She argues that he was not included during the period of his sanction which began last February and should not be included now that he is working. DCF's regulation with regard to the

¹As part of the appeal, the petitioner discussed her son's medical problems from last summer as well as his sanction in February of 2004. It is not clear whether she believes DCF wrongly required her son to participate in work activities or incorrectly sanctioned him at that time. The Board, however, is without jurisdiction to hear those claims as they clearly arose more than ninety days before the petitioner filed her appeal. Fair Hearing Rule 1.

composition of Food Stamp households requires, in pertinent part:

Household Definition

1. General Definition

A household is composed of one of the following individuals or groups of individuals . . .

iii A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

. . .

2. Special Definition

i The following individuals living with others or groups of individuals living together shall be considered as customarily purchasing food and preparing meals together, even if they do not do so:

. . .

C. Parent(s) living with their natural, adopted or step-children 21 years of age or younger.

F.S.M. 273.1(a)

Under the above definition, the petitioner and her children living with her who are not over 21 years of age, must be included in the same food stamp household. The regulations further provide that the income of all persons in the household "from whatever source" including all wages and salaries of an employed person must be counted in determining

the eligibility of the household. F.S.M. 273.9(b)(1)(i). DCF was correct in including the petitioner's son's income in the family eligibility calculations, and correct that the total income exceeded the gross income test for eligibility (in effect at that time) of \$1,654 per month for a family of three. P-2590C.

Prior to his recent employment, the petitioner's son was not excluded from the food stamp household because he was over eighteen but rather because DCF had determined that he had not cooperated with work activities. See F.S.M. 273.7g. The petitioner's son, as a nineteen-year-old living in her home, has always been considered a member of her household and will continue to be so treated until after his twenty-first birthday. As the decision of DCF finding the household ineligible due to excess income is based on its regulations, the Board must uphold the result. 3 V.S.A. § 3091(d), Fair Hearing Rule 17. The petitioner has been advised to report any decrease in her son's income, such as the cessation of overtime pay, to DCF as soon as it occurs.

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